

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

UNITED STATES OF AMERICA	*	
	*	CRIMINAL NO.: 2:05-cr-119-MEF
vs.	*	
	*	
DON EUGENE SIEGELMAN, et al.,	*	

**OPPOSITION TO GOVERNMENT’S MOTION FOR LEAVE  
OF COURT TO FILE OUT OF TIME MOTION IN LIMINE**

The Defendant Governor Don E. Siegelman hereby files his opposition to the Government’s Motion for Leave of Court to file out of time motion *in limine*. The Government’s Motion for Leave should be denied for the following reasons:

1. The Court set a deadline of April 3, 2006 for filing all motions in limine. [Doc. 103, ¶ 3 & Doc. 255, § I, ¶ 1].

2. The Government, like the defendants, has “an obligation to comply with the motion dates set by the court pursuant to” Fed. R. Crim. P. 12( c). United States v. DeLuna, 616 F. Supp. 534 (W.D. Mo. 1985). And, if it “fails to file a pretrial motion before [the Court’s Rule 12( c)] deadline, the party waives that issue,” subject to the Court’s “discretion to excuse the waiver upon a showing of **good cause for the delay**.” United States v. Salgado-Campos, No. 04-3053, 2006 U.S. App. LEXIS 7870, \*3-4 (8<sup>th</sup> Cir. Jan. 9, 2006) (emphasis added). However, courts are “understandably reluctant to grant relief except in **unusually meritorious** cases for untimely motions under Rule 12(f).<sup>1</sup>” United States v. Mangieri, 694 F.2d 1270, 1283 (D.C. App. 1982)

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<sup>1</sup>According to the Notes of the Advisory Committee on 2002 amendments to Fed. R. Crim. P. 12 (emphasis added), “[a]lthough amended Rule 12(e) is a revised version of ... Rule 12(f), the Committee intends to make **no change in the current law regarding waivers of motions or defenses**.” The old Rule 12(f) provided: “Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision ( c), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.”

(emphasis added). *See also*, 1 C. Wright, *Federal Practice and Procedure: Criminal* 2d 193 at 698, 703 n. 36 (concluding that courts rarely grant relief from Rule 12(f) “waivers”).

3. In order to show good cause, the Government must show that the information underlying its belated motion was “**unknown** to [it] *before* the pretrial motion **deadline**.” United States v. Trenkler, No. 92-10369-Z, 993 U.S. Dist. 15375, \*1-2 (D. Mass. Oct. 26, 1993) (emphasis added). *See also*, United States v. Lavasseur, 699 F. Supp. 995, 1007 (D. Mass. 1988) (motion denied because it is untimely and fails to raise any previously unknown information).

4. The Government cannot show the requisite good cause because it admits that it has known “[f]or many months” the information underlying its requested motion in limine. [See Doc. 347-1, p. 3, ¶ 5].

5. By its own admission, the Government has been eavesdropping on Defendant Siegelman’s campaign and has not even attempted to demonstrate why this motion could not have been filed earlier.

Based on the foregoing, the Defendant Governor Don E. Siegelman respectfully submits that the Government’s Motion for Leave to file a belated motion in limine is due to be denied.

Dated this the 17<sup>th</sup> day of April, 2006.

Respectfully submitted,

/s/ W. PERRY HALL

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April, 2006, I electronically filed the foregoing Opposition with the Clerk of the Court using the CM/ECF system which will send notification of such to all counsel of record.

/s/ W. PERRY HALL  
COUNSEL